

Appendix E FEDERAL EMERGENCY AND DISASTER ASSISTANCE

The process of requesting disaster assistance under the *Robert T. Stafford Disaster and Emergency Assistance Act* (the Stafford Act) is described in this section. The Stafford Act programs are administered by the U.S. Department of Homeland Security – Federal Emergency Management Agency (DHS/FEMA).

In the Commonwealth, emergencies are managed at the local level. Local officials request state assistance if needed. Likewise the founding principle of the Stafford Act is to authorize federal assistance to the states only when the resources of the state are fully committed. Therefore, the Commonwealth is compelled to manage every emergency or disaster to the full extent of its capabilities.

1. Declaration of a State of Emergency

The Governor is the Director of Emergency Management in the Commonwealth. As authorized by the Code of Virginia § 44-146.17, the Governor “shall take such action as is necessary for the adequate promotion and coordination of state local emergency services activities relating to the safety and welfare of the Commonwealth in time of natural or man-made disasters”. By executive order the Governor may declare a state of emergency to exist for all or part of the Commonwealth when a threat or actual event has the potential to impact people, infrastructure, or private or public property. The executive order has the force and effect of law.

Before requesting assistance from the Commonwealth, local officials usually declare an emergency to exist in their locality. Even the threat of disaster, such as an approaching hurricane, can stimulate local and state declarations. These actions permit governmental agencies to mobilize resources, conduct disaster preparedness, response and recovery activities as assigned in their plans, and authorize expenditures to cover the disaster activities.

The Governor’s ‘state of emergency’ expires at the end of the fiscal year in which it is issued, unless otherwise continued by another executive order. The ‘state of emergency’ provisions usually apply only to state agencies and their efforts to assist local governments in taking actions necessary to prepare for or alleviate threatening conditions. An executive order does not direct or apply to the actions of private citizens or employers unless specifically stated in the executive order for that disaster.

A declaration of a ‘state of emergency’ is one of the executive directives the Governor must take before requesting federal assistance under the Stafford Act. It indicates that the state is committing all its resources before requesting assistance from the federal government and that the consequences of the event are or will be greater than the Commonwealth’s capabilities.

2. Damage Assessments – Initial and Preliminary

Immediately after the initial impact of an incident, the Recovery Transition Team begins analyzing initial damage assessments (IDA) and situation reports from localities. When those reports indicate that the impact of the event on individuals, infrastructure, private property and public property is severe, the Governor or his designee may request the participation of the U.S.

Commonwealth of Virginia Emergency Operations Plan
Appendix E, Federal Emergency and Disaster Assistance

Department of Homeland Security – Federal Emergency Management Agency (FEMA) in joint federal-state Preliminary Damage Assessments (PDA) for specific counties and cities. Before requesting a joint PDA, the state must verify, in some manner, the IDA reports submitted by the localities.

Local officials determine the actual sites the PDA Teams will visit. In most cases the state and federal officials conduct a joint PDA prior to requesting a presidential declaration to estimate the extent of the disaster and its impact. Data collected by the teams are evaluated by the Recovery Transition Team in the context of a demographic and economic profile of the impacted community. If the Governor requests a declaration, the results of the PDA may be included in the information prepared for the president in order to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the local governments and that federal assistance is necessary. In some events, severe and widespread damages are apparent from on-site reports. In such instances, the Governor's declaration request may be expedited and submitted to the president prior to the PDA.

3. Presidential Declaration

Under provisions of the Stafford Act the Governor may request two types of presidential declarations for disaster assistance: Emergency or Major Disaster. They are defined as follows:

- a. An emergency declaration is for "any occasion or instance for which, in the determination of the president, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States."
- b. A major disaster declaration is for "a major disaster categorized as a natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the president, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of the state, affected local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby."

An 'emergency declaration' authorizes assistance for emergency work performed by local authorities and state. A 'major disaster' declaration authorizes the full range of assistance programs for either private individuals or public agencies or both.

Although the declarations authorized by The Stafford Act are presidential, other federal disaster assistance declarations can be authorized independently. See attachments for the Small Business Administration (SBA) declaration, the U.S. Department of Agriculture declaration and the DHS/FEMA Fire Management Assistance declaration. If the disaster is caused by a criminal act such as terrorism, assistance may be supplemented through non-Stafford Act federal programs. See Attachment D.

The Governor's written request for either an emergency or a major disaster declaration is addressed to the president and is reviewed by the Federal Emergency Management Agency

Commonwealth of Virginia Emergency Operations Plan

Appendix E, Federal Emergency and Disaster Assistance

(FEMA), both regional and headquarters, and the Department of Homeland Security (DHS). The federal code (44 CFR) specifies information needed in the Governor's request for assistance. The Governor must indicate that appropriate executive actions have been taken including direct execution of the authorities specified in the Code of Virginia and the *COVEOP*. This includes declaring a state of emergency to exist in the Commonwealth and implementing the plans and procedures authorized in the *Code*. The Governor also needs to furnish information on the nature and amount of state and local resources that have been or will be committed to alleviate the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act. The Governor must certify that, for the current disaster, state and local government obligations and expenditures (of which state commitments are a significant proportion) will comply with all applicable cost-sharing requirements. In addition, the name of the State Coordinating Officer for the event is named in the Governor's letter of request.

Based on the Governor's request, the president may declare that a major disaster or emergency exists, thus activating an array of federal programs to assist in the response and recovery effort. Not all programs are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment, any subsequent information that may be discovered, and the specific request of the Governor.

The presidential declaration statement will include the official appointment of a Federal Coordinating Officer (FCO), the designation of the types of assistance to be made available and the cities and counties eligible to receive assistance. In large-scale or catastrophic events, the declaration process can be expedited. In certain emergencies involving federal primary responsibility, *the Stafford Act* allows the president to provide emergency assistance without a Governor's request. In a non-Stafford Act emergency, the president may direct federal departments and agencies to conduct prevention, preparedness, emergency response, and incident management activities consistent with their authorities and responsibilities on a non-reimbursable basis.

The Commonwealth will assign a state liaison to work closely with the local emergency management coordinator in each declared locality and with the federal liaison assigned to each declared locality. The purpose is to closely coordinate recovery activities to expedite assistance to impacted families and communities.

Most federal disaster recovery programs require a presidential disaster declaration pursuant to *the Stafford Act* to qualify for assistance. Some designated areas are also automatically eligible for Small Business Administration (SBA) and U.S. Department of Agriculture (USDA) programs upon presidential disaster declaration. However, the SBA, the USDA and the Fire Management Grant programs can also be activated independently from the Stafford Act declaration process. (See Attachments A, B and C)

In response to the Governor's specific request, federal assistance in four general categories is available for a major disaster declaration through DHS/FEMA—*direct assistance*, *individual assistance*, *public assistance*, and *hazard mitigation assistance*. "Direct assistance" includes missions assigned to federal agencies for specific resources or services such as debris removal or medical care. The other three categories are programs authorized by the Stafford Act and coordinated with the Commonwealth. A declaration may authorize only individual assistance or only public assistance. Hazard mitigation opportunities are made available in most situations. Non-federal match funds are required for all three programs. The state is required by the CFR to develop and maintain administrative plans for each of the programs for which a state cost share is

Commonwealth of Virginia Emergency Operations Plan
Appendix E, Federal Emergency and Disaster Assistance

required. These plans are contained in *Support Annex #2: Administrative Plans to Manage Recovery Programs*. A brief description of the Stafford Act programs follows:

Individual Assistance

The term Individual Assistance (IA) applies to assistance for individuals and households. At least six (6) specific programs may be activated under this category.

- The Individuals and Households Program (IHP) is a combined FEMA and state program that provides money and services to people in the declared area whose property has been damaged or destroyed and whose losses are not covered by insurance. This assistance may include temporary housing (such as rental assistance), home repair and other needs assistance (ONA.)¹. The ONA program is administered by the Department of Social Services.
- The U.S. Small Business Administration (SBA) can make federally subsidized loans to repair or replace homes, personal property or businesses that sustained damages not covered by insurance. The SBA can provide three (3) types of disaster loans to qualified homeowners and businesses: (i) Home Disaster Loans for homeowners and renters to repair or replace disaster-related damages to home or personal property; (ii) Business Physical Disaster Loans to business owners to repair or replace disaster-damaged property, including inventory, and supplies; and (iii) Economic Injury Disaster Loans as capital to small businesses and to small agricultural cooperatives to assist them through the recovery period. SBA repair and replacement loans may include the costs of mitigation measures to reduce vulnerability to future events.
- The Disaster Unemployment Assistance (DUA) Program provides unemployment benefits and re-employment services to individuals who have become unemployed as a direct result of the disaster. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarter to qualify for other unemployment compensation. The program is administered by the Virginia Employment Commission.
- Legal Services – FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal services assistance to disaster victims. Legal advice is limited to cases that will not produce a fee (i.e., the attorneys work without payment). The program is administered by the Virginia Bar Association.
- Crisis Counseling is designed to provide supplemental funding to states for short-term crisis counseling services to people affected in disasters. The Commonwealth may request “Immediate Services” for immediate mental health needs (screening, diagnostic, counseling techniques, and outreach services) and “Regular Service”, designed to provide up to nine months of crisis counseling, community outreach, and consultation and

¹ If a disaster is caused by a criminal act, such as terrorism, the victims and their families are eligible for assistance through state and federal programs to assist victims of crime. Implementation of these programs does not require a presidential declaration of major disaster and, if there is a declaration, takes precedence over the FEMA program. See Attachment D.

Commonwealth of Virginia Emergency Operations Plan

Appendix E, Federal Emergency and Disaster Assistance

education services to people affected by a disaster. The grant is administered by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

- Special Federal and State Tax Considerations may be offered taxpayers who have sustained a casualty loss from a declared disaster. This loss may be deducted or reflected on the federal and state income tax returns for the year in which the casualty actually occurred or on the tax returns for the preceding tax year. Copies or transcripts of previously filed tax returns will be provided free of charge to taxpayers located in the declared disaster area. Federal and state tax officials may postpone tax deadlines to provide extra time to file returns or pay taxes before assessing any penalties.

Public Assistance

This category of aid is available to public entities, and certain private non-profit organizations, to fund the repair, restoration, reconstruction, or replacement of a public facility or infrastructure that is damaged or destroyed by the disaster and to support emergency response actions taken during the disaster. Eligible applicants include state agencies, local governments, and other political subdivisions of the Commonwealth. Certain private nonprofit (PNP) organizations may also be eligible to receive assistance if they have programs and facilities that provide essential services of a governmental nature to the general public. Some examples of eligible PNPs are: electric cooperatives, volunteer fire departments and rescue squads, and public service authorities. FEMA provides at least 75% of the approved expenditures. In Virginia, the non-federal cost is shared between the state and local applicant (except PNP). The state pays between 10% and 25% of the approved expenditures. (See the Public Assistance Administrative Plan, *Support Annex 2*)

Public Assistance for Localities Not Declared for Federal Assistance

The Code of Virginia (§ 44-146.28) authorizes the use of state funds to “provide financial assistance to eligible applicants located in an area declared (by the Governor) to be in a state of emergency, but not declared to be a major disaster area for which federal assistance might be forthcoming.” This program is managed by VDEM under the same rules and regulations as the DHS/FEMA Public Assistance Program and is considered a “program of last resort” for those localities that cannot meet the full cost of disaster responsibilities. (See *Support Annex 2*)

Hazard Mitigation Assistance

This category of post-disaster aid provides funding for measures designed to reduce future damages or eliminate losses to public and private property. In the long term, mitigation measures reduce personal loss, save lives, and reduce the costs of responding to and recovering from disasters. Under the Stafford Act, FEMA can provide hazard mitigation funds for up to 75% of the cost, with some restrictions, for planning and for the implementation of cost-effective projects.

Under a presidential declaration of major disaster, communities statewide can apply for mitigation funds through the Hazard Mitigation Grant Program (HMGP). The state, as a grantee, is responsible for notifying potential applicants of the availability of funding, defining a project selection process, ranking and prioritizing projects, and forwarding projects to FEMA for funding. The applicant, or sub grantee carries out approved projects. The amount of funding available for the HMGP under a disaster declaration is finite and is limited to 15% of FEMA’s estimated total disaster costs for select other categories of assistance (less administrative costs). The *Virginia Standard Hazard Mitigation Plan (Support Annex 1)* establishes priorities for the implementation of HMGP in the Commonwealth.

Commonwealth of Virginia Emergency Operations Plan
Appendix E, Federal Emergency and Disaster Assistance

Non-FEMA Federal Disaster Assistance Programs²

In addition to DHS/FEMA, many federal agencies have assistance programs that may be applicable after a disaster. Some programs, such as those that assist victims of crime or victims of un-intentional hazardous materials incidents, may operate as they do in non-disaster circumstances. Other programs may have ‘disaster’ or ‘emergency’ components to allow supplemental or enhanced grants if certain conditions are met. Many of the supplemental programs are tied to the presidential declaration of a major disaster under the Stafford Act. For instance, if a county or city is declared eligible for disaster assistance from DHS/FEMA, it may also be eligible for grants from the Department of Agriculture (Emergency Watershed Program administered by the Natural Resources Conservation Services - NRCS), the Department of Housing and Urban Development - HUD (Community Development Block Grant-CDBG), the Department of Labor (Workforce Investment Act) or the Department of Transportation (Federal Highways Administration).

ATTACHMENTS

- A. Small Business Administration (SBA) Declaration
- B. U.S. Department of Agriculture (USDA) Declaration
- C. Fire Management Assistance Grant Program (FMAGP) Declaration
- D. Disasters Caused by Criminal Acts

² *Disaster Assistance: A Guide to Recovery Programs (FEMA-229/September 2005).*

**Attachment A
Small Business Administration (SBA) Disaster Declaration**

In an event in which the state determines that there are damages to private and commercial properties which may be eligible for SBA assistance, the SBA conducts an independent assessment of the property damages. The Governor may request a disaster declaration directly to the SBA. However, if the Governor is requesting a declaration of major disaster from the president, he cannot request an SBA declaration concurrently. If FEMA responds to the Governor's request and indicates that a presidential declaration of major disaster is not warranted, the Governor may then request an SBA declaration. If the Governor appeals the FEMA determination, the state is not eligible for an independent SBA declaration until the appeal process is completed. FEMA is not involved in the activities of an independent SBA declaration.

SBA Disaster Loans

The SBA can make federally subsidized loans to repair or replace homes, personal property or businesses that sustained damages not covered by insurance. The SBA can provide three (3) types of disaster loans to qualified homeowners and businesses. These include Home Disaster Loans for homeowners and renters to repair or replace disaster-related damages to home or personal property; Business Physical Disaster Loans to business owners to repair or replace disaster-damaged property, including inventory, and supplies; Economic Injury Disaster Loans as capital to small businesses and to small agricultural cooperatives to assist them through the recovery period. SBA loans may be used to repair or reconstruct damaged structures and to implement mitigation measures to reduce future risks. In both SBA and presidential declarations, SBA loans are the only federal recovery assistance available to businesses.

Disaster Recovery Centers

Under an SBA declaration, the SBA opens one or more disaster recovery centers in the declared counties and cities and staffs them with loan officers to assist disaster victims with their paperwork.

Declaration Process

When the state requests a joint PDA, SBA will participate with FEMA on the assessment teams in counties and cities where substantial damages to residential and business structures have occurred. SBA will compile its own report indicating the severity of damages. If the state is approved for a presidential declaration of major disaster, SBA's disaster loan program will be available to property owners in the declared cities and counties. If the request for major disaster is denied, the Governor may apply for an independent SBA declaration. For more information, visit the SBA Disaster Services website at www.sba.gov/services/disasterassistance.

**Commonwealth of Virginia Emergency Operations Plan
Appendix E, Federal Emergency and Disaster Assistance**

**Attachment B
U. S. Department of Agriculture Disaster Declaration**

The Virginia Department of Agriculture and Consumer Services is the Commonwealth's primary point of contact for assessing agricultural damage and working to deliver federal assistance. The USDA Farm Service Agency (FSA) is the primary federal agency for most agricultural disaster recovery. FSA county offices provide a local point of contact, and FSA has numerous disaster assistance programs such as programs for crop loss, livestock, farm structures, trees, cropland, waterways and other needs. *Most programs are subject to availability of funds and often depend upon special appropriations. All program rules are subject to change.*

Three types of disaster declarations are authorized under 7 CFR 1945-A: presidential, USDA secretarial or FSA administrator's physical loss notification. The type of declaration is determined by the damage assessments. Current information about USDA disaster programs is available at the FSA website: <http://disaster.fsa.usda.gov/fsa.asp>

- In the event of a presidential declaration of major disaster, the USDA notifies FSA of the primary counties named in the declaration. The declared counties and cities and the contiguous counties and cities (including in adjacent states) are eligible for USDA disaster assistance.
- The USDA secretarial disaster may be requested by the Governor or the Governor's authorized representative without a presidential disaster declaration.
- The FSA physical loss notification may be requested by the FSA state executive director.
- State Office:
Virginia State FSA Office
1606 Santa Rosa Rd.
Culpeper Building, Suite 138
Richmond, VA 23229
Phone: 804-287-1503
Fax: 804-287-1723
Website: <http://www.fsa.usda.gov/va>

**Attachment C
USDHS/FEMA Fire Management Assistance Declaration**

Overview

The US Department of Homeland Security (DHS) Fire Management Assistance Grant Program (FMAGP) provides a 75% federal cost-share reimbursement to States for actual costs. FEMA fire management assistance grants are made available to state and local governments, including federally-recognized Indian tribes, to minimize immediate adverse effects, and to manage and control wildland fires that threaten to cause major disasters. The state, as the grantee, may apply for assistance on behalf of local sub-grantees. The assistance covers fire-related activities, including, but not limited to, firefighting and support services, pre-positioning federal, out-of-state, and international resources for up to 21 days, evacuations, sheltering, traffic control, emergency operations centers, and temporary repairs of damage caused by firefighting activities.

Declaration Process

Declarations operate on a 24-hour real-time basis and are frequently conducted over the telephone and with written follow-up. The Governor submits a request for a fire management assistance declaration to the FEMA Regional Director while the fire is burning uncontrolled. The FEMA Regional Director makes recommendation to the DHS Under Secretary, or designee.

The Under Secretary, or designee, approves or denies requests based on:

- The conditions that existed at the time of the request;
- Whether or not the fire or fire complex threatens such destruction as would constitute a major disaster.

DHS evaluates the threat posed by the fire or fire complex on four criteria:

- Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas;
- Availability of state and local firefighting resources;
- High fire danger conditions, as indicated by nationally accepted indices such as the National Fire Danger Ratings System;
- Potential major economic impact.

After making a determination, the Under Secretary, or designee, notifies the Regional Director who in turn notifies the state. The state has one opportunity to appeal any FEMA declaration denial. The FEMA Recovery Division Director will render the determination on the appeal, which will be the final administrative decision for FEMA.

**Attachment D
Disasters Caused by Criminal Acts**

If a disaster is caused by a criminal act, such as terrorism, the individuals and families affected may qualify for assistance as victims of crime as well as victims of a disaster. The same program that provides assistance to an individual who suffers personal physical injury as a result of a crime, trying to prevent a crime or apprehending a criminal, may also provide assistance to multiple persons who are victims of acts of terrorism.

Criminal Injuries Compensation Fund (CICF)

The Virginia Compensating Victims of Crime Act became effective on July 1, 1977, to pay unreimbursed expenses of victims who suffer personal physical injury or death as a result of a crime. The Criminal Injuries Compensation Fund (CICF) is administered by the Virginia Workers' Compensation Commission and is funded by court fees, assessments on offenders for restitution, and a federal Victim of Crime Act (VOCA) grant to supplement monies available to victims of violent crime. Acts of terrorism are considered compensable crimes and eligible for compensation from the Fund.

CICF does not require a presidential declaration of major disaster to initiate its program in the aftermath of an act of terrorism. As soon as homeland security officials have determined that the cause of a disaster is criminal, the CICF services may be initiated. The CICF assistance, like the FEMA Individuals and Households Program (IHP), is a "last resort" service, meaning any insurance or other applicable financial assistance program must pay first. However, based on experience in Arlington County in 2001, after terrorists attacked the Pentagon, the VOCA-funded CICF program pays before the FEMA-funded IHP.

The process of identifying eligible unreimbursed costs related to the crime (disaster) is similar to the FEMA process for determining eligibility for Other Needs Assistance (ONA) through the Individuals and Households Program (IHP). Close coordination between the CICF manager and the ONA manager proved beneficial to the victims and victims families impacted by the attack on the Pentagon.